

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

JOHN ROBINSON JR.,)	Case No. RED-99-0069
)	
Appellant,)	FINDINGS OF FACT, CONCLUSIONS OF
)	LAW AND ORDER OF THE BOARD
v.)	
)	
DEPARTMENT OF NATURAL RESOURCES,)	
)	
Respondent.)	

I. INTRODUCTION

1.1 Hearing. This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held at the Department of Transportation Maintenance Building in Port Angeles, Washington, on May 10, 2000. LEANA D. LAMB, Member, did not participate in the hearing or in the decision in this matter.

1.2 Appearances. Appellant John Robinson Jr. was present and was represented by Jerry Gaddy. Respondent Department of Natural Resources was represented by Mark A. Anderson, Assistant Attorney General.

1.3 Nature of Appeal. This is an appeal from a disciplinary sanction of reduction in salary for neglect of duty, inefficiency, insubordination and gross misconduct. Respondent alleges that Appellant failed to efficiently perform the duties of his position as a Forest Crew Supervisor of an inmate crew and by not ensuring that inmates performed pre-commercial thinning tasks during work hours.

1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Anane v. Human Rights Commission, PAB No. D94-022 (1995), *appeal dismissed*, 95-2-04019-2 (Thurston Co. Super. Ct. Jan. 10, 1997); Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

II. FINDINGS OF FACT

2.1 Appellant John Robinson Jr. is a Forest Crew Supervisor and permanent employee for Respondent Department of Natural Resources. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on August 13, 1999.

2.2 By letter dated June 22, 1999, Thomas E. Robinson, Olympic Region Manager, notified Appellant of his reduction in pay, effective July 16, 1999 through January 15, 2000. Mr. Robinson charged Appellant with neglect of duty, inefficiency, insubordination, and gross misconduct. Mr. Robinson alleged that Appellant failed to perform the duties of his position as a Forest Crew Supervisor of an inmate crew by not ensuring that inmates performed pre-commercial thinning tasks during work hours.

2.3 As a Forest Crew Supervisor, Appellant was responsible for supervising the daily work activities of a work crew composed of Department of Corrections inmates performing forest clearing tasks. In February 1999, Appellant was supervising a crew of approximately 10 to 13 inmates whose duties included performing pre-commercial forest thinning using a variety of tools, including chain saws. Appellant typically operated a bus to the Olympic Corrections Center (OCC) where he picked up the crew of inmate workers and then drove them to a variety of forest work sites.

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2 2.4 Appellant has no other formal disciplinary action, however, Craig Atwood, Appellant's
3 supervisor, provided Appellant with a letter of understanding addressing concerns after Appellant
4 permitted inmates from his crew to stand on a bus. On April 10, 1998, Keith Page, Camp
5 Superintendent, gave Appellant a memo entitled "Clarification of Performance Expectations" which
6 addressed concerns with Appellant's failure to adequately supervise inmate activities. The memo
7 resulted from three incidences in which Appellant remained in his vehicle while inmates performed their
8 tasks unsupervised. Appellant was directed to supervise inmate activities, monitor safety, ensure
9 production quality and quantity, and ensure compliance with policies.

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11 2.5 In early February 1999, an inmate on Appellant's work crew made allegations against
12 Appellant. The Department of Corrections conducted an investigation. The investigation was
13 inconclusive.

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15 2.6 On February 12, 1999, Mr. Atwood, provided Appellant with a memo which outlined a list of
16 work expectations. The memo made reference to the incident in which the inmate had made false
17 allegations against Appellant, however, the memo did not make any specific reference to the nature of
18 the allegations. The list of expectations contained standard work expectations for all forest crew
19 supervisors and were normally conveyed to employees verbally. However, the expectations were given
20 in writing to Appellant due to concerns with his work performance in the area of his supervision of the
21 inmates. This list, in part, directed Appellant as follows:

- 22 • Upon reaching a work site, you and your crew are to be actively engaged in work
23 activity within 30 minutes of arrival;
- 24 • When working, your crew is to be in visual contact at all times;
- 25 • Upon reaching a work site, if weather conditions prevent you from work, you will
26 notify a camp manager and request instructions;

- While working on projects away from camp, you will work as late in the day as possible, allowing only enough time to return to camp by 4:30 p.m.;
- In the event of completing a field task before the end of the day, you will call a camp manager for directions;
- Inmates will be accounted for hourly by a visual count.

2.7 On February 18, 1999, Appellant and his crew were working at a forest site in La Push, Washington. William Sanders, Camp Manager, and Mr. Atwood, approached Appellant's work site at approximately 12 p.m. Mr. Sanders and Mr. Atwood noted the absence of chain saws running. Because of the number of inmates on Appellant's crew, the majority of the inmates should have been running their chain saws. Mr. Sanders and Mr. Atwood remained at the work site to observe Appellant's performance to determine whether Appellant was complying with the list of work expectations he received on February 12.

2.8 The credible evidence and testimony of Mr. Sanders established that between 12:30 p.m. and 1:50 p.m. Appellant's work crew operated one chainsaw for approximately 10 minutes and another chainsaw for approximately 15 minutes. At approximately 2 p.m., Appellant and his work crew boarded their bus. Appellant started the bus and allowed it to idle for approximately one hour. During this time period, inmates went in and out of the bus while Appellant remained seated in the bus. At approximately 3:15 p.m., Appellant and his crew returned the OCC.

2.9 On February 19, 1999, Mr. Sanders again returned to Appellant's work site to observe Appellant's performance. Mr. Sanders arrived at approximately 7:25 a.m. Appellant and his crew arrived at 7:57 a.m., however, they remained in the bus with the engine idling until 8:25 a.m. Appellant and his crew did not begin to work until 9:11 a.m.

1 2.10 Thomas E. Robinson, Olympic Region Manager, was Appellant's appointing authority. After
2 reviewing witness statements from Mr. Atwood and Mr. Sanders and reviewing Appellant's explanation
3 of the events, Mr. Robinson determined that misconduct had occurred and that disciplinary action was
4 warranted. In determining the level of discipline, Mr. Robinson reviewed Appellant's personnel file and
5 history with the department. He also considered previous concerns addressed with Appellant regarding
6 his supervision of inmates.

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8 2.11 Mr. Robinson also considered that work crew supervisors had a duty to model a positive work
9 ethic for inmates, and that Appellant failed to set a positive example by arriving late to the work site, not
10 requiring that the inmates perform their duties, and by sitting in the bus for an excessive period of time.
11 Mr. Robinson believed that Appellant understood the performance expectations given to him, and he
12 concluded that Appellant neglected his duty to ensure that the inmate crew was actively engaged in pre-
13 commercial thinning tasks within 30 minutes of arrival at a site. Mr. Robinson viewed Appellant's use
14 of the inmate work crew as an inefficient use of state resources and time when they remained in the bus
15 instead of working. He also determined that Appellant was insubordinate when he failed to comply with
16 the list of work expectations he received on February 12, 1999.

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18 2.12 Mr. Robinson concluded that previous informal attempts to encourage Appellant to modify and
19 improve his performance had failed and that a more severe penalty was appropriate. Mr. Robinson
20 concluded that a six-month reduction in salary was warranted.

21 22 **III. ARGUMENTS OF THE PARTIES**

23 3.1 Respondent argues that Appellant was given reasonable work expectations and that he had a
24 duty to carry them out. Respondent argues that the expectations were put in writing for Appellant's
25 benefit in an attempt to help him succeed in his position. Respondent argues that the testimony of Mr.
26 Sanders is credible and established that on February 18 and 19, 1999, Appellant neglected his duty to

1 ensure that his inmate crew was performing its duties and constituted an inefficient use of state
2 resources. Respondent further argues that Appellant's failure to follow the expectations set forth by his
3 supervisor constitutes insubordination. Respondent argues that Appellant's actions rise to the level of
4 gross misconduct and that the reduction in salary was the appropriate sanction.

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6 3.2 Appellant argues that the list of expectations he was provided was generated by an investigation
7 conducted by the Department of Corrections regarding false allegations made by an inmate against him.
8 Appellant argues that he was exonerated as a result of an investigation and that all information which
9 resulted was to be destroyed. Appellant argues, however, that the information gathered during the
10 investigation was used to develop the list of work expectations. Appellant argues that Respondent
11 violated the law by not destroying all information regarding the investigation.

12 13 IV. CONCLUSIONS OF LAW

14 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
15 herein.

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17 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the
18 charges upon which the action was initiated by proving by a preponderance of the credible evidence that
19 Appellant committed the offenses set forth in the disciplinary letter and that the sanction was
20 appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of Corrections, PAB
21 No. D82-084 (1983).

22
23 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
24 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't of
25 Social & Health Services, PAB No. D86-119 (1987).

1 4.4 Inefficiency is the utilization of time and resources in an unproductive manner, the ineffective
2 use of time and resources, the wasteful use of time, energy, or materials, or the lack of effective
3 operations as measured by a comparison of production with use of resources, using some objective
4 criteria. Anane v. Human Rights Commission, PAB No. D94-022 (1995), *appeal dismissed*, 95-2-
5 04019-2 (Thurston Co. Super. Ct. Jan. 10, 1997).

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7 4.5 Insubordination is the refusal to comply with a lawful order or directive given by a superior and
8 is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v. Dep't of
9 Social & Health Services, PAB No. D94-025 (1995).

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11 4.6 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to carry
12 out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

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14 4.7 Appellant was aware of the performance expectations of his position, and he was clearly aware
15 of his duties and responsibilities regarding inmate supervision. Appellant's failure to ensure that inmates
16 performed the duties of their job, and his practice of sitting in the bus with the inmates for extended
17 periods of times when they should have been working constitutes a neglect of his duty and resulted in an
18 inefficient use of his work time and inmate work time. Respondent has met its burden of proving by a
19 preponderance of the credible evidence the charges of neglect of duty and inefficiency. However,
20 although Respondent has shown that Appellant neglected his duty to follow the work expectations of
21 February 12, 1998, Respondent has not shown that Appellant's actions were insubordinate or that his
22 misconduct was flagrant or adversely affected the agency's ability to carry out its functions.
23 Respondent has failed to meet its burden of proof that Appellant's conduct was insubordinate or
24 constituted gross misconduct.

1 4.8 In determining whether a sanction imposed is appropriate, consideration must be given to the
2 facts and circumstances, including the seriousness and circumstances of the offenses. The penalty
3 should not be disturbed unless it is too severe. The sanction imposed should be sufficient to prevent
4 recurrence, to deter others from similar misconduct, and to maintain the integrity of the program. An
5 action does not necessarily fail if one cause is not sustained unless the entire action depends on the
6 unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

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8 4.9 In assessing the level of discipline imposed here, we find that the disciplinary sanction is not too
9 severe. Appellant had received prior counseling regarding his need to better supervise his inmate crew.
10 However, he continued to neglect his duties and responsibilities. Therefore, we conclude that the
11 reduction in salary is appropriate under the facts and circumstances and the disciplinary sanction should
12 be affirmed.

13
14 **V. ORDER**

15 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of John Robinson Jr. denied.

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17 DATED this _____ day of _____, 2000.

18
19 WASHINGTON STATE PERSONNEL APPEALS BOARD

20
21 _____
22 Walter T. Hubbard, Chair

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24 _____
25 Gerald L. Morgen, Vice Chair
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